IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14-08-2007

Coram :

The Hon'ble Mr. Justice F.M.IBRAHIM KALIFULLA
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.3284 of 2002
and W.P.M.P.No.4607 of 2002

The Government of Tamil Nadu
rep. by Secretary to Government,
Home (SC) Department,
Fort St. George,
Chennai - 600 009. ... Petitioner

vs.

1. M.Noorudheen

2. The Registrar
Tamil Nadu Administrative Tribunal
Chennai. .. Respondents

Writ Petition, seeking certiorari is filed by the petitioner, under Article 226 of the Constitution of India, to call for the records of the Tamil Nadu Administrative Tribunal, the second respondent in O.A.No.5011 of 2000, dated 09.08.2001 and quash the same.

For Petitioner : Mr.M.Dhandapani
Special Government Pleader (Writ)

For Respondents : Mr.G.Masilamani, Senior Counsel
for M/s. G.M.Mani Associates for R1

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O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

This writ petition has been filed challenging the order, dated 09.08.2001, made in O.A.No.5011 of 2000 on the file of the Tamil Nadu Administrative Tribunal, Chennai.

2. The first respondent had filed the aforesaid Original Application against the petitioner herein, challenging the order, dated 18.02.2000 made in Letter No.SC/679-110/95. The Tamil Nadu Administrative Tribunal, by the impugned order has allowed the Original Application filed by the first respondent and set aside the aforesaid order, dated 18.02.2000 passed by the writ petitioner herein.

3. It is not in dispute that the first respondent herein joined service as Station Fire Officer on 01.11.1968 under the Director of Fire Service, Chennai and after working at various stations, got promoted as Assistant Divisional Fire Officer on 21.10.1977 and that his service was regularised, pursuant to G.O.Ms.No.2387 with effect from 07.09.1984. While so, on 28.02.2000, a charge memo was served on the first respondent in his proceedings made in Lr.No.SC/679-110/95.

4. The following charges were framed against the first respondent herein as per the memo served on him.

> " Charge -I :
> That the said Thiru M.Noorudheen, while functioning as Divisional Fire Officer, North Division, Chennai, during the year 1990, was a member of the "Test Check Committee" constituted by the then Director of Fire Service, Chennai, for test checking the second consignment of Bachert Portable Fire Pumps supplied during April 1990 by Tvl.Nisarzs & Co., with whom orders were placed by the then Director of Fire service for the supply of 50 Nos. Of fire pumps at Rs.2,39,000/- per pump with accessories. Tvl.Nisarzs & Co. While making the supplies had failed to supply suction hose couplings along with other accessories, even though, they (suction hose couplings) formed an integral part of the accessories to be supplied, as per specifications in IS 942/1982, 944/1979 and 12717/89. While submitting the Test Check Report, he acquiesced with the incorrect decision earlier taken by the other Test Check Committee Members viz. Tvl.V.Ananthasekar and N.Sakthivel at the time of the Test Check of the first consignment and their recommendation that the suction hose couplings may be

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provided from the State Work shop before distributing the pumps to the Fire Stations, knowing fully well that these couplings ought to have been supplied by Tvl.Nisarzs & Co. at no extra cost, along with the pump and other accessories. As a result, the Director of Fire Service, Chennai had purchased from the same firm, the suction hose couplings (200 Nos.) at a total cost of Rs.1,49,600/- at Rs.748/- per hose coupling. By his failure to point out and bring on record the afore mentioned fact, he had been a party to the conferment of undue pecuniary advantage on Tvl.Nisarzs & Co. To the above extent and thereby, he failed to maintain absolute integrity and devotion to duty and conducted himself in an unbecoming manner and contravened rule 20 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

Charge No.II
That, Thiru M.Noorudheen, in the course of the investigation of the case in Cr.No.34/96 of Crime Branch, CID Headquarters, Chennai, was examined u/s 161 Criminal Procedure Code. In the course of the statement, he had stated that he committed the delinquencies under pressure and coercion and threat of punishment from his superior. By his own statement, he had conducted himself in a way inconsistent with the faithful discharge of his duty in the service and failed to act in the best interests of the Government. He had, thereby, misconducted himself and contravened rule 20 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973."

5. According to the petitioner, only on the basis of the material furnished by the appropriate enquiry authority, Secretary to Government, Home (S.C.) Department issued the charge memo to the first respondent under Rule 17 (b) of the Tamil Nuadu Civil Services (Disciplinary and Appeal) Rules, 1955 and that the Tribunal has not considered the delinquencies of the first respondent that had come to light, based on his statement recorded under Section 161 of the Code of Criminal Procedure on 09.09.1997 and also similar statements given by other members of the "Test -Check Committee" recorded under Section 161 and 164 (5) of the Cr.P.C. and that the Tribunal erred to note that the criminal case and the departmental proceeding initiated against the first respondent were different and that the first respondent is liable to be proceeded with the disciplinary proceedings for not discharging his lawful duty.

6. According to the learned Senior Counsel for first respondent, the charge framed against the first respondent was based on mere surmises and non application of mind, though there was no nexus between the first respondent and the alleged charges. He has further contended that the

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impugned order was passed with inordinate delay of 10 years, without any reason for the delay and the same was motivated, since the petitioners next promotion as Deputy Director of Fire Service was due on 31.08.2000, in order to create an impediment for his promotion, the action was taken against him. According to the first respondent, the charge memo issued against him, 10 years after the date of the alleged occurrence was arbitrary, illegal and liable to be set aside.

7. The Tamil Nadu Administrative Tribunal considering the facts and circumstances and also relying on the decisions cited by the learned counsel for the first respondent allowed the Original Application and set aside the impugned order, dated 18.02.2000 passed by the petitioner herein.

8. Mr.M.Dhandapani, learned Special Government Pleader appearing for the petitioner herein contended that the charge memo was issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, only based on the materials furnished by the appropriate authority. According to him, the impugned order passed by the Tribunal is erroneous, contrary to law and vitiated by material irregularity and pleaded for allowing the writ petition.

9. Per contra, Mr.G.Masilamani, learned Senior Counsel appearing for the first respondent would contend that the first respondent has served under the petitioner herein for about 32 years without any blemish and he was awarded 14 rewards. In the criminal case, he was arrayed as one of the accused. Though, he was acquitted in a criminal case, only based on the statement recorded by police under Section 161 Cr.P.C, the petitioner instituted the enquiry proceedings 10 years after the alleged occurrence, which is prejudicial to the legitimate interest of the first respondent. According to the learned Senior Counsel, the departmental proceedings initiated 10 years after the occurrence, without any explanation for the inordinate delay, solely based on the statement allegedly recorded under Section 161 Cr.P.C is against law and not legally maintainable. In support of his contention, the learned Senior Counsel relied on the decision of the Hon'ble Apex Court in P.V.Mahadevan vs. MD, T.N.Housing Board, reported in 2005 (6) SCC 636, wherein the Hon'ble Supreme Court has held that the delay in initiating the departmental enquiry, 10 years after the occurrence without convincing explanation could be very prejudicial to the delinquent official and accordingly, quashed the charge memo issued by the authority.

10. It is well settled that merely on the ground of acquittal of an official in the criminal case, departmental proceedings need not be given up. As contended by the learned Special Government Pleader, mere delay in initiating domestic enquiry would not vitiate the proceedings, unless the same is prejudicial to the delinquent official.

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11. Admittedly, as per the impugned proceedings made in Lr.No.SC/679-110/95, dated 18.02.2000, the charge memo issued is consisting of two charges, the first one is that the first respondent had not brought the fact of non-supply of accessories to the Bachert Portable Fire Pumps supplied during April 1990 by M/s. Nisarzs & Co. to the knowledge of the authorities. The second charge is that while giving statement under Section 161 Cr.P.C, the first respondent has stated that he committed the delinquencies under pressure, coercion and threat of punishment from his superior. As found by the Tribunal, the first respondent was one of the members of the Test-Check Committee, constituted by the then Director of Fire Service Mr.E.Hariharane, I.P.S, who had placed the orders for the supply of 50 Nos. of Bachert Portable Fire Pumps with M/s. Nisarzs & Co., Chennai and the said company placed materials in three batches of 15, 25 and 10 pumps during the year 1990, but suction hose couplings were not supplied by the said company.

12. It is not in dispute that on 30.01.1990, when the first batch was supplied, the Director of Fire Service, constituted a Test-Check Committee consisting of M/s. V.Ananthasekar, Deputy Director of Fire Service, N.Sakthivel, Divisional Fire Officer and S.Vasantharaj, Assistant Divisional Fire Officer. It has been alleged that when the Test-Check Committee pointed out non-supply of suction hose couplings, the then Director Mr.E.Hariharane, I.P.S, scolded the committee members and directed them to give report that the couplings would be got from the State Central Workshop and accordingly, the committee gave a letter, dated 06.02.1990 to that effect. When the second batch of 25 Nos of Bachert pumps were supplied by M/s. Nisarzs & Co, during April 1990, the Director of Fire Service had constituted another Test-Check Committee consisting of M/s. Ananthasekar, Deputy Director of Fire Service (Northern Region), N.Sakthivel, Divisional Fires Officer (Madras South) and the first respondent, as Divisional Fire Officer (Chennai North). Therefore, in the Test-Check Committee, instead of Mr.Vasantharaj, Assistant Divisional Fire Officers, the first respondent was substituted as one of the committee members.

13. The first respondent made his submission before the Tribunal that at the time of Test-Checking, he pointed out regarding the non-supply of the suction hose couplings, by the supplier and also raised his objections for the issue of fitness certificate. . The first respondent was then called to the Office of the Director of Fire Service and reprimanded for raising such objections and was directed to issue the fitness certificate, without referring to the non-supply of the suction hose couplings. Accordingly, the Test-Check Committee consisting of three members, including the first respondent did not bring on record the fact of non-supply of suction hose couplings by the supplier. As regard the second charge, in paragraph 9, the reply of the petitioner reads as follows :

> " The facts which are the subject matter of the present charge memo had emerged during the

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investigation in the case of Crime Branch CID, Headquarters, Cr.No.34/96. The investigation in Crime Branch, CID Cr.No.34/96 against Thiru.E.Hariharane, IPS and three other was completed on 02.02.1999 and the charge sheet was filed against them on 10.03.1999 in C.C.No.1/99 before the Hon'ble XI Additional Sessions and Special Judge, Chennai, for various offences under the Indian Penal Code and the Prevention of Corruption Act, 1988."

14. It is not in dispute that the Test-Check Committee was constituted only by the then Director of Fire Service. The first member of the said committee was the Deputy Director of Fire Service and the first respondent was only a junior member of the committee constituted by the Director of Fire Service.

15.The State Administrative Tribunal, in the impugned order at paragraph No.6, has held as follows :

"6. It is admitted that the applicant has raised objection with reference to the non-supply of suction hose couplings and refused to issue fitness certificate. But, he was compelled to sign the report along with other two members of the Test Committee, by the Director of Fire Service himself. The applicant has clearly stated this, in the statement given under Section 161 Cr.P.C, when an investigation / enquiry conducted by the CB CID. It is surprising that when a person speaks truth, he is charged that he has committed an offence. "

16. As found by the Tribunal, the first respondent was also appointed as one of the members of the Test-Check Committee by the then Director of Fire Service. It has been admitted in the reply that the first respondent, at the time of Test-checking had brought to the notice, regarding the non-supply of suction hose couplings and also raised objection regarding issue of fitness certificate, but he was called upon to the Office of the Director of Fire Service and reprimanded by raising such objection. He was directed to issue fitness certificate, without reference to non-supply of accessories, accordingly, the fitness certificate was issued. As found by the Tribunal, it is seen that the Director of Fire Service, his superior officer and also Head of the Department, who has directed the first respondent to issue the fitness certificate, without raising objection with reference to the non-supply of suction hose couplings, for which the then Director Mr.E.Hariharane, I.P.S has been prosecuted in the criminal case.

17. The learned Senior Counsel, Mr.G.Masilamni would contend that in the aforesaid circumstances, when the Director of Fire Service himself

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having been prosecuted, the first respondent being subordinate officer cannot be proceeded with departmental enquiry, as the criminal case was ended in his favour. It is not in dispute that there is no bad antecedence against the first respondent, in his 32 years of service under the petitioner and that he was awarded 14 rewards, while in service.

18. Further, it is not in dispute that the first respondent was issued with a charge sheet, nearly 10 years after the alleged occurrence, that apart, as per the arguments advanced by Mr.M.Dhandapani, learned Special Government Pleader, the supporting materials to initiate the Departmental Proceeding, as against the first respondent is the statement recorded under Section 161 Cr.P.C in the aforesaid criminal case.

19. It is very clear that as per Section 162 Cr.P.C. no statement made by any person to a police officer in the course of an investigation shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise or any part of such statement or record, be used for any purpose, at any inquiry or trial in respect of any offence under investigation, at the time when such statement was made. It is also clear that no confession made to a police officer shall be proved as against the person accused of any offence, as per Section 25 of the Indian Evidence Act. Here in the instant case, admittedly, no such confession statement was given by the first respondent. The materials available, as per the averments of the petitioner, is only the unsigned alleged statement given by the first respondent, as per Indian Evidence Act, it cannot be taken as evidence. Further, even as per the alleged statement recorded under Section 161 Cr.P.C, as a member of the Test-Check Committee constituted by the Director of Fire Service, the first respondent had signed the report in a compelling circumstance by his aforesaid superior officer. The similar statements said to have given by the other delinquent officials, admittedly would not bind the first respondent, as held by the Administrative Tribunal. It is also not in dispute that as per Article 20 (3) of the Constitution of India, no person accused of any offence shall be compelled to be a witness against himself.

20. As contended by the learned Senior Counsel for the first respondent, the charges I and II are inter-connected, since, as per charge I, due to the failure to point out and bring it on record the aforesaid fact, he himself in a unbecoming manner, he contravened Rule 20 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973. The first respondent had in the course of investigation of the case in Cr.No.34 of 1996 of CBCID, Headquarters, Chennai gave a statement under Section 161 Cr.P.C, where he committed the aforesaid delinquencies under pressure, coercion and threat of punishment by his superior and thereby contravened Rule 20 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

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21. According to the petitioner, there was failure of the first respondent to record the non-supply of suction hose couplings by the supplier, when he was functioning as a member of the Test-Check Committee and that would amount to abdication of responsibility and which resulted in failure to safe guard the financial interest of the Government. According to the petitioner, the aforesaid failure of the first respondent would constitute unbecoming conduct and lack of devotion to duty on the part of the first respondent. It has been further stated by the petitioner that while the first respondent was examined during investigation in Cr.No.34/96 by Crime Branch CID, Headquarters, Chennai, admitted that he had signed as a Test-Check Committee member in the report, under pressure and coercion and threat of punishment from the Director of Fire Service.

22. Mr.G.Masilamani, learned Senior Counsel appearing for the first respondent contended that the statement recorded by the police, under Section 161 Cr.P.C can be used only in favour of the accused to elicit any contradiction and the prosecution cannot use the same for corroboration against the delinquent official. Per contra, the learned Special Government Pleader would contend that in a departmental enquiry, the statement recorded under Section 161 Cr.P.C can be construed as evidence for the purpose of proving the charges against the delinquent official.

23. It is not in dispute that the statement under Section 161 Cr.P.C is recorded by police official, which would not contain the signature of the first respondent, in view of Section 162 Cr.P.C and therefore, the Statement recorded under Section 161 Cr.P.C is only a self-serving document, which would not bind the delinquent official in any manner. Even, the petitioner's version is that as per the said statement, the first respondent had stated that he was made to sign, as a member of the committee in the report, due to pressure and compelling circumstance by his superior officer.

24. The Tamil Nadu Administrative Tribunal, Chennai has mainly considered that the delay caused by the petitioner would be prejudicial to the rights of the first respondent. It has also discussed in detail that the domestic enquiry against the first respondent is based on the statement recorded under Section 161 Cr.P.C and the statement of the co-accused recorded under Sections 161 and 164 Cr.P.C.

25. The Hon'ble Supreme Court of India in the decision P.V.Mahadevan vs. MD.T.N.Housing Board, reported in 2005 (6) SCC 636, at page number 641 has held as follows :

> "11.Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental

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> agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee, but in the public interest and also in the interests of inspiring confidence in the minds of the government employees…"

26. In the aforesaid case, the departmental enquiry proceeding was initiated 10 years after the occurrence. In this case also, admittedly, the departmental proceeding against the first respondent has been initiated with a delay of 10 years after the occurrence. For the inordinate delay, admittedly, there is no explanation, much less, satisfactory explanation from the petitioner.

27. Mr.G.Masilamani, learned Senior Counsel vehemently submitted that the delayed domestic enquiry would cause unbearable mental agony and distress to the first respondent, who had served for more than 22 years of service without any blemish.

28. In the decision, State of Punjab and others vs. C.Chaman Lal Goyal, reported in 1995 (2) SCC 570, the Hon'ble Apex Court has held at paragraph 9 as follows :

> " Delayed initiation of proceedings is bound to give room for allegation of bias, malafide misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted."

In the above referred case, there was a delay of 5 ½ years in serving the charges.

29. In the decision, The state of Madhya Pradesh vs. Bani Singh and another, reported in 1998 Crl.L.J. 1315, the Hon'ble Apex Court has held that "there is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

30. In the decision, State of Andhra Pradesh vs. N.Radhakrishnan, reported in 1998 SC 1833, the Hon'ble Supreme Court has ruled that if the delay in unexplained, the prejudice to the delinquent employee is writ large on the fact of it.

31. In the instant case, admittedly, the delay caused by the petitioner is more than 10 years to initiate departmental proceedings, after the alleged occurrence and for which, there is no explanation. Even, as per the affidavit filed in support of the writ petition, the material

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available for the said domestic enquiry is stated only the statement recorded by the police under Section 161 Cr.P.C and similar statements given under Sections 161 and 164 Cr.P.C by other officials, which would not be legally acceptable evidence.

32. We are of the considered view that for domestic enquiry, the concept of preponderance of probability is sufficient and guilt of the delinquent official need not be proved beyond reasonable doubt, as required in a criminal case. In order to initiate departmental enquiry, some prima facie material to establish the charges would be sufficient, but the inadmissible statements, as per Indian Evidence Act, would not be considered as prima facie materials to initiate the domestic enquiry and that too, after a lapse of 10 years.

33. Considering the arguments advanced by both the learned counsel and the materials available before us, we are of the view that the inordinate unexplained delay of 10 years would certainly cause prejudice to the first respondent, in the light of the decisions rendered by the Hon'ble Supreme Court of India referred above and further, there is no prima facie material to initiate departmental enquiry against the first respondent, 10 years after the alleged occurrence. On the facts and circumstances, we could find no error or infirmity in the impugned order passed by the Tamil Nadu Administrative Tribunal, so as to warrant the interference of this court in the writ petition.

34. We therefore, hold that this writ petition is liable to be dismissed and accordingly, the same is dismissed. However, there is no order as to costs. Consequently, connected W.P.M.P. No.4607 of 2002 is also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

The Registrar
Tamil Nadu Administrative Tribunal
Chennai.

+ 1 CC To M/s.G.M.Mani associates SR NO. 50797

+ 1 CC to the Government Pleader SR NO 51082

W.P.No.3284 of 2002

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